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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,330	07/10/2006	Jacobus Johannes Van Dijk	72998-013900/US	7515

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EXAMINER	
RUBY, TRAVIS C	
ART UNIT	PAPER NUMBER
3744	

NOTIFICATION DATE	DELIVERY MODE
06/24/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/564,330	VAN DIJK, JACOBUS JOHANNES	
	Examiner	Art Unit	
	TRAVIS RUBY	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 March 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-12,18,19 and 21* is/are pending in the application.

4a) Of the above claim(s) *2-6,18,19 and 21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 8-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212) in view of Lipinski (US4067347).

Re Claim 1. Whitcomb teaches a partition for separating two areas, an outer area and an inner area (Figure 1),

comprising two translucent separation walls (ref 18, 22) (Column 2 lines 23-33),

wherein means are provided for moving a liquid (ref 48) between said separation walls, said means comprising liquid dispensing nozzles (ref 54) arranged to provide a liquid film (Column 1 line 65 to Column 2 line 6; Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11),

wherein one of said separation walls is an external separation wall in contact with said outer area (ref 22) and the other of said separation walls is an internal separation wall in contact with said inner area (ref 18), wherein said liquid film moves over said internal separation wall (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11), a thermal insulating space being present between said liquid film and the external separation wall (Column 2 lines 42-51, Column 4 lines 45-61).

Whitcomb teaches that the two panels are spaced apart and that spacers can be utilized to accomplish this (Column 2 lines 42-51) but fails to specifically teach that the two panels are at least five millimeters apart. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the two panels about five millimeters apart, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

Whitcomb teaches that one separation wall is permanent and that an additional wall can be added for increased heat transfer efficiency but Whitcomb fails to specifically teach said external separation wall is installed permanently and said internal separation wall is removable. Lipinski teaches an external separation wall (ref 86) is installed permanently (Column 5 lines 63-68; Column 6 lines 10-15) and an internal separation wall (ref 50) is removable (Column 4 lines 44-66). In view of Lipinski's teachings, it would have been obvious to one of ordinary skill in the art to make the external wall of Whitcomb permanent since that provides the predictable and expected result of structural rigidity; while making the internal separation wall of Whitcomb removable allows for the predictable and expected result of selective heat transfer when additional conditioning of the space as necessary.

Re Claim 8. Whitcomb teaches the partition separates the interior of a building construction from surroundings of the building construction (Figure 1), wherein said internal separation wall provided with liquid is adjacent to the interior of said building construction (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11).

Re Claim 9. Whitcomb teaches the internal separation wall or the external separation wall comprises polyethylene plastic (Column 4 lines 45-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyamide, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended used as matter of obvious design choice. In re Leshin, 125 USPQ 416. In this instance, both materials are a clear plastic that are commonly used in heat exchange.

Re Claim 10. Whitcomb fails to specifically teach that the external separation wall is provided with a surface that can be removed therefrom in order to form an opening in said external separation wall. Lipinski teaches the external separation wall is provided with a surface that can be removed therefrom in order to form an opening (ref 26) in said external separation wall (Column 3 lines 49-52, Column 5 lines 63-68). In view of Lipinski's teachings, it would have been obvious to one of ordinary skill in the art to make an opening in the external wall since this allows for the predictable result of venting the interior of the structure and in addition allows for an entrance to be formed to the inside of the structure.

Re Claim 11. Whitcomb teaches a frame (ref 24) that is arranged around said internal separation wall and contains a liquid feed (ref 46) and a liquid discharge (ref 54) (Column 2 lines 35-51, Column 3 lines 1-26; Column 3 line 64 to Column 4 line 11).

Re Claim 12. Whitcomb teaches said internal separation wall can be moved into a space by said frame (Figure 1 and 2, Column 2 lines 35-51).

Response to Arguments

3. Applicant's arguments filed 3/17/2010 have been fully considered but they are not persuasive.

4. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that Lipinski fails to teach an inner separation wall that is removable and an outer wall that is permanent. As can be seen in Lipinski Figure 2 and 3, Lipinski teaches an exterior wall 86 that is permanent and an interior wall 50 that is removable. Whitcomb teaches an exterior wall 22 that is exposed to the exterior area and an interior wall 18 that is exposed to the interior area. Thus, the combination of Whitcomb as modified by Lipinski teach that an interior wall that is in contact with the interior area can be removable while the exterior wall that is in contact with the exterior area is permanent.

5. In response to applicant's argument that Whitcomb and Lipinski is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both of the references

relate to translucent covered greenhouses that perform the same function of regulating the temperature inside a structure by capturing sunlight. Thus, one of ordinary skill in the art would recognize that the references are analogous art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAVIS RUBY whose telephone number is (571)270-5760. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules or Cheryl Tyler can be reached on 571-272-6681 or 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Travis Ruby/
Examiner, Art Unit 3744

/Frantz F. Jules/
Supervisory Patent Examiner, Art Unit 3744